BAIL SLIP

That the Appellants 1 and 3 namely Annamalai and Abimanyu were directed to be released on bail by order of this Court dated 23.6.2004 in Crl.M.P.No.5562/2004 in Crl.A.No.785/2001.

That the Appellants 2, 4 and 5 namely Thangamani, Palani, Velu @ Velmurugan were directed to be released on bail by order of this Court dated 11.9.2001 in Crl.M.P.No.5850/2001 in Crl.A.No.785 of 2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No.785 of 2001

1. Annamalai
2. Thangamani
3. Abimanyu
4. Palani
5. Velu alias Velmurugan ... Appellants/Accused

Vs

State, rep. by Inspector of
Police, Sooramangalam
Police Station, Salem Dist.
(Cr.No.530 of 1996) ... Respondent/Complainant

Prayer: Appeal against the judgment passed by the learned III Additional Sessions Judge, Salem, in S.C.No.6 of 1999 dated 21.6.2001.

For Appellants : Mr.S.Shanmugavelayutham

For Respondent : Mr.V.Jayaprakash Narayanan
Government Advocate.

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J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR,. J)

Appellants 1 to 5, who were arrayed as A-1 to A-5, were tried and convicted by the learned III Additional Sessions Judge, Salem, in Sessions Case No.6 of 1999.

2. Appellants 1 and 2 were charged under Section 148 I.P.C. while appellants 3 to 5 were charged under Section 147 I.P.C. under Charge Nos.1 and 2 respectively. Appellant 1 and 3 were charged under Section 302 read with 34 I.P.C. under Charge No.3 and under Charge No.4, appellants 2, 4 and 5 were charged under Section 302 read with 149 I.P.C. The third appellant was charged under Section 323 I.P.C. for causing injury to P.W.1 under Charge No.5, while the fourth appellant was charged under Section 323 I.P.C. for causing injury to P.W.1 under Charge No.6. The second appellant was charged under Section 324 I.P.C. for causing injury to P.W.3 under Charge No.7 and the fifth appellant was charged under Section 323 I.P.C. for causing injury to P.W.4 under Charge No.8. Under Charge No.9, the fourth appellant was charged under Section 323 I.P.C. for causing injury to P.W.2 and the fifth appellant was charged under Section 323 I.P.C. for causing injury to P.W.2 under Charge No.10. The learned trial Judge, while finding appellants 3 to 5 guilty under Section 147 I.P.C., sentenced each one of them to six months rigorous imprisonment and appellants 1 and 2, on being found guilty under Section 148 I.P.C., were each sentenced to one year rigorous imprisonment. Appellants 1 and 3 were found guilty as charged under Section 302 read with 34 I.P.C. and were each sentenced to imprisonment for life. Appellants 2, 4 and 5 were also found guilty under Section 302 read with 149 I.P.C. and they were also similarly sentenced. The third appellant, who was found guilty for causing injury to P.W.1, was sentenced to six months rigorous imprisonment and the fourth appellant, on being found guilty under Section 323 I.P.C. under Charge Nos.6 and 9, was sentenced to six months rigorous imprisonment under each charge. The second appellant, on being found guilty under Section 324 I.P.C., was sentenced to one year rigorous imprisonment, while the fifth appellant, on being found guilty under Charge Nos.8 and 10, for causing injuries to P.Ws.4 and 2 respectively, was sentenced to six months rigorous imprisonment under each charge. The appeal is against the said conviction and sentence.

3. The facts are: P.W.1 is the son of the deceased Mathaiyan and P.W.2 is the wife of the deceased. They were residing at Jagir Kamanaickenpatti. P.W.3, the younger brother of the deceased and P.W.4, the wife of P.W.3, were residing in the house, which was adjacent to the house of the

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deceased. P.W.7 is the nephew of the deceased. The accused were also residents of the same village and they are, in fact, agnates of the deceased. There was no love-lost between the two families for about ten years and they were not on talking terms. There used to be quarrels between the parties on account of the cattle straying into the fields of the deceased's family. The deceased had lands in the village and around the lands, he has planted trees. The deceased was enjoying the trees by cutting the leaves and using it as manure. On 21.3.96, the appellants cut the branches of a tree and therefore, on 25.3.96, the deceased accompanied by P.W.7 went and brought the branches and placed them near the house of P.W.1's grandmother. At about 8.00 p.m. on the same day, the appellants went to the house of the deceased and picked up a quarrel. P.W.11, who was present, intervened and asked them not to quarrel at that odd hour. The appellants went away.

4. On the next day, that is, on 26.3.96, at about 5.45 or 6.00 a.m., the deceased was about to leave for his work. P.W.1, 2 and the sister of P.W.1 were in the house. Appellants 1 to 5 went to the house of the deceased and started shouting by asking the deceased to come out. The deceased came out of the house followed by P.Ws.1 and 2. The first appellant was having a koduval and the second appellant was having a spade. The third appellant was in possession of a wooden reaper. The fourth appellant was having a bamboo stick and the fifth appellant was having a stick. On hearing the shouts of the appellants, P.Ws.3 and 4, who were living adjacent to the house of the deceased, came out, followed by P.Ws.5 and 6, who were also residing nearby. On seeing the deceased, the appellants questioned him as to how dare he could remove the branches, which they have cut and told him that unless he is done away with, they cannot live in peace. The first appellant cut the deceased on the head with the koduval followed by the third appellant, who beat him on the head with the wooden reaper. When P.W.1 intervened, he was beaten with the wooden reaper by the third appellant. P.W.1 suffered injuries on the left hand, left leg as well as on the right leg. The fourth appellant caused injuries to P.W.3, when he intervened, by beating him indiscriminately with the spade on the back of his chest, head, flank and other parts of the body. When P.W.4, the wife of P.W.3, intervened, the fifth appellant beat her on the head, on the left hand and on the left leg. P.W.2 intervened and she suffered the same fate at the hands of the fourth appellant, who beat her with the bamboo stick on the hands and legs. While the appellants were beating the deceased and the witnesses, appellants 2 and 4 also suffered injuries. The occurrence was witnessed by P.Ws.1 to 6. After beating the deceased and the witnesses, the appellants went away from the place. The deceased fell down and blood was gushing out. The witnesses, in order to save the

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deceased, removed him to Government Mohan Kumaramangalam Hospital and produced him before P.W.7, the Casualty Medical Officer, at 7.45 a.m. He examined him and found the following injuries:-

1. Lacerated cut injury of 4 x 1 cm. in the centre of scalp.
2. A lacerated cut injury 3 x 1 cm. in the right side scalp.
3. A cut injury of 3 x 1 cm. near to injury No.2.
4. Contusion of 6 x 2 cm. in the right side back and right loin.
5. Contusion of Haemotama eye lop right. Not able to open.
6. Bleeding from nose.

The doctor issued Ex.P.7, which is the copy of the accident register. The doctor also sent Ex.P.8, intimation, to the outpost police station.

5. On receipt of the intimation, the police personnel attached to the outpost police station, informed P.W.16, the Sub-Inspector of Police attached to Sooramangalam police station and on receipt of the said information, P.W.16 proceeded to Government Mohan Kumaramangalam Hospital. In the meantime, P.Ws.1 to 4, who suffered injuries during the transaction, appeared before the doctor, P.W.10. P.W.3 was the first to be examined and on his person, the doctor found the following injuries:-

1. Stab injury of 3 x 1 cm. x muscle deep in the right arm.
2. Lacerated cut injury of 5 x 2 cm. x skull deep in left side scalp.
3. Contusion of 4 x 3 cm. with abrasion of skin deep in right side back.
4. Contusion of 3 x 3 cm. over left scapular region.

Ex.P.9 is a copy of the accident register and Ex.P.10 is the wound certificate. P.W.1 was examined by the doctor and on his person, he found the following injuries:-

1. Contusion of 4 x 3 cm. in the left hand.
2. Contusion of 4 x 3 cm. in left knee.
3. Abrasion of skin deep with contusion in right leg.

Ex.P.12 is the wound certificate issued by the doctor. P.W.2 was, thereafter, examined and on his person, the doctor noticed the following injuries:-

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1. Contusion of 3 x 2 cm. in right thigh.
2. Contusion of 2 x 2 cm. in left leg.
3. Abrasion of skin deep in the left scapular region in the contusion around it.

Ex.P.13 is a copy of the accident register. P.W.4 was finally examined by the doctor at 11.15 a.m. and he found the following injuries on his person:-

1. Lacerated cut injury of 3 x 1 cm. in the left side scalp.
2. Tenden in the left shoulder with restriction and painful should (lt.) movement.

Ex.P.14 is a copy of the accident register issued by the doctor, P.W.10.

6. P.W.16, on reaching the hospital and finding P.W.1 at the hospital, questioned him. He gave a statement, which was reduced into writing. The said statement is Ex.P.1. P.W.16 returned to the police station and registered a case in Crime No.530 of 1996 against the appellants under various sections of the Indian Penal Code by preparing express reports. Ex.P.35 is a copy of the printed first information report. The express reports were sent to higher officials and investigation was taken up by P.W.18.

7. P.W.18, the Inspector of Police attached to Sooramangalam police station during the relevant period, on receipt of a copy of the printed first information report at 2.00 p.m., proceeded to the scene of occurrence and reached it at 3.00 p.m. He prepared an observation mahazar, Ex.P.4. A rough sketch, Ex.P.38, was drawn. He examined witnesses and recorded their statements. He seized blood-stained earth and sample earth under a mahazar, Ex.P.5, attested by witnesses. At about 6.30 p.m., he took photographs of the backyard of the house of P.W.1's grandmother. He seized the branches, which were kept there, under a mahazar, Ex.P.6. He left the scene of occurrence and reached Government Mohan Kumaramangalam Hospital, where he examined P.Ws.1 to 4 and recorded their statements. The injured Mathaiyan (the deceased) was found unconscious. P.W.18 seized the blood-stained clothes, which the deceased was wearing at the time of occurrence, under a mahazar, Ex.P.3. On 27.3.96, on receipt of the death intimation, Ex.P.18, that Mathaiyan died at about 11.45 p.m., P.W.18 altered the crime to one under Section 302 I.P.C. by preparing express reports. Ex.P.39 is a copy of the printed first information report in the altered crime. He proceeded to Government Mohan Kumaramangalam Hospital and after summoning panchayatdars, conducted inquest between 9.00 a.m. and 10.00 a.m.

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over the dead body of Mathaiyan and during the inquest, he examined P.Ws.1 to 4. The inquest report is Ex.P.40. After the inquest, he gave a requisition to the doctor requesting him to conduct autopsy.

8. On receipt of the requisition, P.W.17, Assistant Professor, Government Mohan Kumaramangalam Medical College, Salem, conducted autopsy on the dead body of Mathaiyan and he found the following injuries:-

1. A sutured wound on the right parietal region of scalp, 3 cms. x 0.5 cm. x bone deep in the sagital plane, edges clean cut with marginal bruising - Dark Red.

2. A sutured wound on the mid parietal region of scalp, close tot he midline, 5 cms. x 0.5 cm. x bone deep in the sagital plane, edges clean cut with marginal bruising - Dark Red.

3. A cut injury on the left parietal region of scalp, 4 cms. away from the midline, 3 cms. x 0.5 cm. x bone deep, edges clean cut with marginal bruising - Dark Red.

4. A sutured wound in the coronal plane, 5.5 cms. x 0.5 cm. x bone deep on the anterior part of left parietal region, 2 cms. away from the injury No.3, on removal of the sutures edges irregular.

5. A sutured wound in the coronal plane, 6 cms. x 0.5 cm. x bone deep on the anterior part of right parietal region 4 cms. anterior to the injury No.1, on removal of the sutures edges irregular with marginal bruising - Dark Red.

6. A curved sutured wound at convexity facing backwards, 1 cm. front of right ear, on the right side of face and right temporal region, 9 cms. in length. On removal of the sutures, edges clean cut 1 cm. in Diameter, exposing the brain matter, craniotomy - surgical treatment.

7. Right eye black eye.
8. Dark brown colour abrasions, on the right shoulder 3 cms. x 2 cms., on the back of lower part of right side of chest, 5 cms. x 3 cms., on the front of middle 3rd of left arm, 4.5 cms. x 0.5 cm., on the left axilla 5 cms. x 0.5 cm. On the chin, 0.5 cm. x 0.5 cm., on the front of upper part of left side of abdomen, 3 cms. x 0.5 cm., on the right upper eyelid, 0.5 cm. x 0.5 cm.

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9. An infected wound on the front of upper 3rd of left leg, 3 cms. x 0.5 cm. x bone deep with surrounding Dark Brown colour abrasions. Light brown colour foul smelling pus present.

10. On reflecting the scalp, subscalpular bruising on the right side of frontal, parietal, temporal regions and left parietal region, 20 cms. x 17 cms. - Dark Red.

11. Fissured fracture of right side of frontal bone and sutural separation of right side of coronal suture corresponding to injury number-5.

12. Right temporalis muscle is found clean cut - surgical treatment. A bone piece of size, 6 cms. x 4 cms. of right parietal bone beneath the injury number-7 is found missing, exposing the brain matter.

13. Extradural haemotoma on the right frontal, temporal lobes of cerebrum weighing 50 gms.

14. Diffused subdural haemotoma on both cerebral hemispheres.

15. Subarachnoid haemorrhage on both parietal lobes of cerebrum.

16. Laceration of right frontal lobe of cerebrum, 2 cms. x 1 cm. x 0.5 cm.

17. Fracture of floor of anterior cranial fossa in a communised manner, communicates with the external fracture noted in injury number-11.

The doctor issued Ex.P.37, the post-mortem certificate, with his opinion that death was on account of cranio cerebral injuries.

9. P.W.18, in the meantime, searched for the appellants and arrested them at about 6.00 a.m. on 30.3.96 in the presence of witnesses. They were questioned and they gave statements. Exs.P.19 to P.23 are the admissible portions of the statements given by appellants 1 to 5. In pursuance of the admissible portions of the statements given by the appellants, M.Os.1 to 5 were seized under mahazars, Exs.P.24 to P.28 respectively. The mahazars were attested by witnesses. The appellants were brought to the police station and as appellants 2 and 4 had injuries on their person, they were sent to the hospital for treatment with a memo. On being produced by a police constable, P.W.12, the

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Casualty Medical Officer attached to Government Mohan Kumaramangalam Hospital, examined the fourth appellant at 10.05 p.m. on 30.3.96, he found the following injury:-

" Rt. side occipital area, head 7 mm x 5 mm lacerated injury, injection present & slug. "

Ex.P.16 is a copy of the accident register. The second appellant was examined and on his person, the doctor noticed the following injuries:-

1. Rt. middle finger swelling, contusion. Dark in colour, with 7 mm x 5 mm abrasion.

2. Lt. Leg 1 cm. x 5 mm. Abrasion.

3. Big toe, 1/2 cm. x 3 mm. Abrasion dark. Abrasions are with scab formation.

Ex.P.17 is a copy of the accident register. The fourth appellant gave a statement, Ex.P.41, and it was registered as a case in Crime No.557 of 1996. Ex.P.42 is a copy of the printed first information report in the said crime. On 14.5.96, P.W.18 examined the medical officers and other witnesses. After the completion of investigation, the final report was filed against the appellants on 8.7.96.

10. The appellants were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. The second appellant filed a written statement, wherein he has stated that the entire prosecution case is false and according to him, on 26.3.96, he and his brother, the fourth appellant, were in their house and his parents and his other brothers were away in connection with their job. According to him, the deceased, accompanied by his brother, P.W.3 and his family members, reached his house by bringing their supporters and beat him and his brother, the fourth appellant and also threatened them. According to him, he and his brother, the fourth appellant, were beaten and they also caused injuries to the witnesses and that he could not say as to the person, who suffered injuries on account of their beating. He has further stated that he, accompanied by the fourth appellant, went to Sooramangalam police station and gave a complaint, which was reduced into writing, in which, his signature was obtained. He has further alleged that they were detained at the police station and the police officers went away and on the same day, his father and brothers were brought to the police station and questioned and thereafter, produced before the Magistrate. The fourth appellant also filed a written statement

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taking a similar plea, which was taken by the second appellant in his written statement. They did not examine any witness on their side.

11. The learned counsel appearing for the appellants submits that appellants 2 and 4 having suffered injuries during the course of the transaction and P.W.1 not having explained the said injuries in the complaint, Ex.P.1 and the witnesses not having explained the injuries when their statements were recorded under Section 161 Cr.P.C., the evidence given by them that appellants 2 and 4 suffered injuries while they were beating the deceased and other witnesses cannot be accepted, as, according to the learned counsel, the present evidence given in Court could only be considered as an after thought. It is his further submission that in the complaint, Ex.P.1, the date 21, relating to the incident of cutting the branches of the tree is found corrected and the said correction shows that the prosecution had been tampering with the records. The learned counsel finally submits that P.W.3, in cross-examination, having admitted that the police officers were present at the scene of occurrence at about 8.00 or 9.00 a.m., the complaint, Ex.P.1, could not have been given at 11.15 a.m. at the hospital by P.W.1 to P.W.16 and the whole case must have been shaped after due deliberation. We have considered the contentions, heard the learned Government Advocate and also perused the entire recorded evidence.

12. The prosecution, by examining P.W.17, the doctor, who conducted autopsy, conclusively established the cause of death of Mathaiyan. The doctor, P.W.17, while in the box, has stated that he found injuries on the dead body and narrated them. According to him, the head injuries found on the dead body are sufficient in the ordinary course of nature to cause death and that injuries 1, 2 and 3 with their corresponding internal injuries could have been caused with a koduval like M.O.1. He has further stated that injuries 4, 5, 8 and 9 could have been caused with a wooden reaper like M.O.3 and that injuries 6 and 12 are surgical wounds. On the medical evidence, we, therefore, hold that Mathaiyan died on account of homicidal violence.

13. The prosecution, before the trial Court, examined six persons as witnesses to the occurrence and they are P.Ws.1 to 6. Except 5 and 6, other witnesses are related to the deceased and of the six witnesses, P.Ws.1 to 4 are injured witnesses. It is the evidence of P.W.1 that there was no love-lost between his family and the appellants' family, who are his agnates, for about ten years and according to him, on 21.3.96, the branches of a tree, which was in possession and enjoyment of the deceased, were cut by the appellants and therefore, the deceased, accompanied by his nephew, P.W.7, went and brought those branches and kept them

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in the backyard of his grandmother's house. It is the further evidence of P.W.1 that on 25.3.96, the appellants reached his house, questioned the deceased and picked up a quarrel and that according to him, it was only at the instance of P.W.11, who pacified and sent them away, the appellants did not precipitate the issue. He has further deposed that on 26.3.96 at about 5.45 or 6.00 a.m., the appellants, on reaching his house, called his father to come out of the house and when his father went out of the house, he and his mother also followed him and that thereafter, the first appellant started the attack on the deceased followed by the third appellant and when the witnesses intervened, they were also beaten by the other appellants. The evidence of P.W.1 is supported by P.Ws.2 to 6. We have already noted that apart from the deceased, P.Ws.1 to 4 have suffered injuries and they were also examined by the doctor immediately after the incident. Their evidence is also supported by P.Ws.5 and 6, who are neighbours. The evidence of the injured witnesses corroborated by the oral testimony of the two independent witnesses as well as by the doctor, who examined them and noted the injuries on their person, therefore, show that P.Ws.1 to 4 were present and witnessed the occurrence along with P.Ws.5 and 6. In fact, P.Ws.1 and 2 are natural witnesses, as they are the son and wife of the deceased and the occurrence having taken place at 6.00 a.m., it is impossible to presume that they could not have been present in the house at that hour. As we already held, they have also suffered injuries during the course of the same transaction along with P.Ws.3 and 4, who were residing in the adjacent house. On going through the evidence of these witnesses, we find no infirmity and the defence could not elicit any answer in favour of the appellants for us to hold that they were speaking falsehood. In fact, for the occurrence, which took place at 6.00 a.m., a complaint was given at the police station even at 11.15 a.m. and it was registered at 1.00 p.m. The complaint, Ex.P.1, as well as the printed first information report were received by the Magistrate at 2.30 p.m. Hence, there is also no delay in laying the complaint. We accept the evidence of the witnesses.

14. We will now take up the contentions of the learned counsel. According to the learned counsel, in Ex.P.1 and other documents, the date 21 is found corrected. He submits that initially the date was written as 22 and later, it was corrected as 21. We have perused the original documents. It is, no doubt, true that initially it was written as 22.3.96 and thereafter, the date 22 is corrected as 21. This date is the date, according to the prosecution, on which the appellants cut the branches of the tree, which was in enjoyment of the deceased. We are unable to understand as to the benefit the prosecution could get by altering the date from 22 to 21. In fact, we are unable to accept that the dates were corrected much later after they were filed in Court. A

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reading of the document, Ex.P.1, shows that not only the date 21.3.96 is found noted, but also Thursday, the day corresponding to the date is also found written. There is no correction as regards the day. It, therefore, shows that the correction from 22 to 21 is only a correction made then and there, as there is no correction as regards the day, namely, Thursday. We do not, therefore, attach any importance to the correction in the date, more so, when such correction will not give any benefit to the prosecution. In fact, in the complaint, Ex.P.41, given by the fourth appellant, it is found mentioned that the branches of the tree were cut on 21.3.96 and there is no dispute that the branches were cut on that date. We, therefore, reject the argument of the learned counsel that the prosecution deliberately altered the date from 22 to 21 with a view to gain advantage, as there is absolutely no advantage by changing the date, especially when there is no correction with regard to the day (Thursday).

15. The other contention of the learned counsel that the prosecution did not explain the injuries found on appellants 2 and 4, though looks very attractive on the face of it, we, on the facts of this case, do not attach much importance. The case of the prosecution is that the appellants went to the house of the deceased and attacked him and the witnesses. The question that is to be decided by us, in this background, is as to who the aggressors are. If the appellants had gone to the house of the deceased and attacked them, it is but natural for the witnesses to retaliate, as no man is expected to keep quiet when he is attacked. It will be treated as an act of cowardice if he does not retaliate with a view to save himself and his family members as well as his property. In fact, the legislature, in its wisdom, thought it necessary to add some sections in the Indian Penal Code. Section 100 deals with right of private defence of the body and Section 103 gives right to a person to defend his property, with restrictions mentioned in Section 99. We feel that it is not necessary for us to extract the two provisions, as they are well known. Suffice it for us to say that we have to remember that there are two provisions in the Indian Penal Code which give right to a person to defend not only his person, but also his property. In MUNSHI RAM AND OTHERS -vs- DELHI ADMINISTRATION (AIR 1968 SUPREME COURT 702), the Supreme Court held as follows:-

> "The right of private defence serves a social purpose and that right should be liberally construed. Such a right not only will be restraining influence and bad characters but it will encourage the right spirit in every citizen and that there is

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nothing more degrading to the human sprit than to run away in face of peril."

16. If the appellants go in a body armed with weapons and start attacking the deceased and his family members, they cannot be silent spectators and with a view to prevent further attack and to save themselves, if they inflicted injuries to the accused, then it cannot be said that the fact that the prosecution did not explain the injuries on appellants 2 and 4 is a ground for the Court to reject the prosecution version. All that the Court is expected to find out is whether the version given by the prosecution is true or the version given by the appellants is true and as to who the aggressors are. We have already extracted the evidence of the prosecution witnesses as well as the written statements of appellants 2 and 4. The prosecution witnesses have stated that the appellants went to the house of P.W.1 and the deceased and attacked them and according to appellants 2 and 4, it was the deceased and his family members, who went to the house of the appellants and attacked them. So, there are two versions and it becomes imperative on the part of this Court to find out as to which version is to be accepted. We have extracted the injuries noted by the doctors on the witnesses as well as on the appellants. The case of the prosecution is that the second appellant attacked P.W.3 indiscriminately with the spade and according to the witnesses, while they were attacking, appellants 2 and 4 also suffered injuries. When we look at the injuries found on the second appellant by the doctor, P.W.12, it could be seen that the second appellant has suffered a fracture on the right hand. In fact, the doctor, P.W.12, has stated that X-Ray was taken and she noted the fracture on the right hand and opined that injury No.1 is grievous in nature. This shows that after the second appellant suffered an injury, he could not have used his right hand to attack the witnesses. We, therefore, find it difficult to accept the defence theory that the witnesses and the deceased went to the house of the second appellant and inflicted injuries upon him and on the fourth appellant; on the contrary, the fracture noticed by the doctor, P.W.12, on the second appellant shows that he must have suffered the said injury, after he had beaten the other witnesses, since he could not have used the right hand after he suffered the said injury for him to have attacked the witnesses on receipt of the injury. This shows that the aggressors are the appellants and not the prosecution witnesses. Once it is found that the appellants had come to the house of the deceased and attacked him and his family members, then the deceased and his family members get the right to save themselves from the said attack and if, in that process, appellants 2 and 4 suffered injuries, the veracity of the prosecution case cannot be doubted. We, therefore, reject the said argument.

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17. We will now take up the final argument advanced by the learned counsel for the appellants. According to the learned counsel, since P.W.3 admitted in cross-examination that police officers were present at the scene even at 8.00 or 9.00 a.m. and thereafter, the witnesses were sent to the hospital, the prosecution case that the complaint was given at 11.15 a.m. is to be disbelieved. We do not find any substance in the said argument. It is to be remembered at this stage that the doctor, P.W.10, examined the deceased Mathaiyan, who was produced before him even at 7.45 a.m. The said fact that he examined Mathaiyan at 7.45 a.m. is found noted in Ex.P.7, which is the copy of the accident register issued by him. If the witnesses and the deceased were sent to the hospital only after the arrival of the police officers at 8.00 or 9.00 a.m., then the doctor, P.W.10, could not have examined the deceased Mathaiyan at 7.45 a.m. at Government Mohan Kumaramangalam Hospital, Salem. We, therefore, reject the said argument also.

18. In view of the discussion made above, we do not find any merit in the appeal. The appeal deserves to be dismissed and it is, accordingly, dismissed. It is reported that the appellants are on bail. The appellants shall surrender to the bail bonds and the learned Sessions Judge shall also take steps to commit them to jail to undergo the remaining period of sentence.

01.09.2005

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistraten No.II, Salem.

2. -do- Through The Chief Judicial Magistrate, Salem.

3. The III Additional Sessions Judge,
Salem.

4.-do- Thro' The Principal Sessions
Judge, Salem.

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5.The District Collector, Salem.

6. The Director General of Police,
Chennai.

7. The Superintendent, Central Prison,
Coimbatore.

8. The Inspector of Police,
Sooramangalam Police Station,
Salem District.

9.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.S.Shanmugavelayutham, Advocate, SR.36703

ra (co)

dv/15.9.05

Crl.A.No.785 of 2001

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